

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

ALMA T. MCBROOM,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION NO.: 2:06-CV-767-F
)	
JOHN E. POTTER, POSTMASTER)	
GENERAL, et al.,)	
)	
Defendants.)	

**DEFENDANT JOHN E. POTTER'S REPLY TO
PLAINTIFF'S RESPONSE TO HIS MOTION TO DISMISS**

COMES NOW Defendant, John E. Potter, in his official capacity as Postmaster General of the United States, by and through Leura G. Canary, United States Attorney for the Middle District of Alabama, and replies as follows to Plaintiff's response to his motion to dismiss:

1. Plaintiff concedes that her sole claim against the Postmaster General is an official-capacity constitutional tort claim against the Postal Service. Such claims are precluded by *FDIC v. Meyer*, 510 U.S. 471, 484-86 (1994).

2. Plaintiff argues that, prior to dismissal, she should be granted leave to amend her complaint. Pl's Response at 2, 3. However, she gives no clue as to the amendment she proposes. It is well-established in this Circuit that "the movant must either attach a copy of the proposed amendment to the motion or set forth the substance thereof."

Atkins v. McInteer, ___ F.3d ___, 2006 WL 3461441 (11th Cir. 2006). *See also, Long v. Satz*, 181 F.3d 1275, 1279-80 (11th Cir. 1999). Plaintiff has not shown how her complaint could be amended to save her meritless claim against the Postal Service. Accordingly, even if the Court were to interpret Plaintiff's response as a Rule 15 (a) motion to amend, that motion is due to be denied. *Id.*

WHEREFORE, for the above reasons and the reasons stated in his moving papers, Defendant, the Postmaster General, requests that the Court dismiss Plaintiff's claims against him in their entirety with prejudice.

Respectfully submitted this 12th day of December, 2006.

LEURA G. CANARY
United States Attorney

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CERTIFICATE OF SERVICE

I hereby certify that on December 12, 2006, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to Anton Hajjar, Esq., Brenda Zwack, Esq., Patricia K. Nakamura, Esq., and William Post Roberts, II, Esq., and mailed a copy of same, first class, postage prepaid, addressed as follows:

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/s/Stephen M. Doyle
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